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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,429	03/17/2004	Farideh Salehi Ajili	Ajili.F-01	5559

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EXAMINER

GBERBI, SUZETTE JAIME J

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/803,429

Applicant(s)

AJILI, FARIDEH SALEHI

Examiner

Suzette J Gherbi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-10 is/are allowed.
- 6) ☒ Claim(s) 11 and 14-17 is/are rejected.
- 7) ☒ Claim(s) 12-13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Lemons 2,844,151. Lemons discloses the invention as claimed comprising: a non-rigid contact member (10) and a relatively narrow rigid pressure rib (14). The intended use recitation/functional language “positionable between a nipple of the female breast and a bottom of the female breast and approximately centered on, approximately normal to and integral with the contact member...” carries no patentable weight in the absence of any distinguishing structure. Lemons clearly discloses the structure as claimed and is found to be inherently capable of performing the function.

3. Claims 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Haverstock 3,863,640. Haverstock discloses the invention as claimed noting figures 3 and 7 comprising: An apparatus with a pair linear adhesive strips (30, 32); the strips each providing a means for mutual engagement, the mutual engagement means enabled for drawing the strips into approximate side-by-side fastened abutment;

wherein the mutual engagement means is eye and hook, hook and loop and wherein the adhesive strips are elastic (see col. 3, lines 10-24). The intended use recitation/functional language “..when the lower portion of the female breast is caused to receive an inward fold so as to cause the female breast to expand upwardly for producing a fuller appearance” carries no patentable weight in the absence of any distinguishing structure. Lemons clearly discloses the structure as claimed and is found to be inherently capable of performing the function.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claim 17 is rejected under 35 U.S.C. 102(e) as being anticipated by Beaudry 6,603,051. Beaudry discloses the invention as claimed noting figures 31 and 34 comprising: a pair of linear adhesive strips; the strips each comprising plural spaced apart adhesive spots (120) ; and means (110) for mutual engagement between corresponding ones of the adhesive spots of the linear adhesive strips. These are apparatus claims and the intended use recitation/functional language “ positioned initially so as to form an inverted V-shape and of such length as to engage a lower

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portion of a female breast extensive between a nipple thereof and a bottom of the female breast...drawing the strips toward each other by causing the lower portion of the female breast to receive and inward fold so as to cause the female breast to expand upwardly for producing a fuller appearance" carries no patentable weight in the absence of any distinguishing structure. Beaudry clearly discloses the structure as claimed and is found to be inherently capable of performing the function. Note col. 19, lines 50-52.

Allowable Subject Matter

6. Claims 1-10 are allowed.

7. Claims 12 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dohan 6,857,935; Kalt 5,755,232; Haverstock 4,531,521; Kawchitch 3,983,878; and Spicer 1,969,188 all show related material.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzette J. Jackson whose work schedule is Monday-Friday 9-6:30 off every other Friday and whose telephone number is 571-272-4751.

10. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306.

11. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Suzette J-J Gherbi
12 May 2005